

Enclosure 2  
Agency Request for Information  
Invited Responses to Twelve Questions

1. Would the handling of leafy greens be better addressed through regulations under a voluntary marketing agreement signed by handlers, or under a mandatory marketing order regulating handlers and approved by a producer referendum?

EPA Region 9, recommends a voluntary marketing agreement signed by handlers, who would then be required to comply with the agreement's regulations or practices. Approval by producer *and handler* referendum is essential to ensure commitment to food safety measures and consumer health. Industry progress under the marketing agreement can be evaluated over time for effectiveness and success before deciding whether to embark on a mandatory marketing order.

2. Would such a program be better implemented on a national or a regional basis?

A regional basis is the preference in order to consider regional variables such as growing conditions, climate, hydrology, wildlife and environmental quality. It is important to have national goals and guidelines to provide baseline consistency and with regional flexibility..

3. How should the United States be subdivided into smaller regions for the purposes of committee representation and program administration?

Those states who are the leading producers of leafy greens (e.g., share of U.S. production, area harvested, volume and total value) should be the focal point to determine how regions are formed. Big producers of leafy greens are primarily California, Arizona, Colorado, and Mexico, suggesting a southwestern region be formed.

4. How should committee membership be allocated to adequately represent the interests of industry throughout all regions of the United States?

It is fundamental that the structure of the committee be fair, comprehensive and balanced to avoid the perception or reality that one set of interests has undue control or dominance. We strongly urge the membership be expanded to include environmental interests such as those agencies or organization responsible for water quality, wildlife and natural resources conservation. In addition, nongovernmental organizations are valued stakeholders as they partner with agencies to collaborate on agricultural and working lands issues. Moreover, academia or research institutions help us with the needed science and research on developing best practices for food safety. These interests should also be invited to participate on the committee.

5. What process should the committee follow to recommend regulations appropriate to the various regions? For example, would regulations for handling leafy greens on the east coast differ from those on the west coast, and if so, how should the administrative committee address the differences while developing recommendations for regulations?

Flexibility is needed to account for regional differences and variables. National goals and guidelines are important to assist regions in developing a baseline set of regulatory requirements.

6. What specific problems or issues should be addressed by such a marketing program?

In California, conflict and tension have arisen between best practices designed for food safety and those best practices for water quality and conservation, as described in our cover letter. We believe this can be avoided if there is better promotion and coordination of these scientifically supported best practices.

7. Would Best Practices based upon FDA guidelines be the best criteria for regulation of leafy greens handling, or are there other criteria available that might better meet the industry's needs?

To date, FDA guidelines have unfortunately highlighted the conflict between the two prominent public interests of food safety and environmental quality. Reliance on FDA guidelines would depend on whether FDA guidelines compromise or conflict with water quality and conservation goals. If there is conflict, then we recommend that the design of best practices be through a process that involves multi-agencies and stakeholders, and ensures that guidelines for food safety do not trigger damage to other equally important public interests. It is critical to have accepted best practices based on sound food safety, agricultural and environmental science.

8. Which specific leafy green commodities should be included under the program's handling regulations?

We recommend that fresh-cut, processed, bagged leafy greens (such as mixed salad varieties) eaten fresh be the target of the program's handling regulations. This is because FDA's data since 1999 show that 98.5% of E. coli 0157:H7 illnesses from leafy greens in California have been traced to this source rather than traditional whole greens.

9. What are potential obstacles to the implementation of such a marketing program? For example, would distance make it impractical for the committee to meet frequently? Might regional subcommittees be appointed to meet more frequently and consider local matters for presentation at annual committee meetings?

This underscores the need for the program to be developed and implemented at the regional level. Resources continue to tighten which has led to more innovative approaches to conducting meetings such as video conferencing, webinars, and teleconference calls. Of course meeting one-on-one is always preferred however, this can be decided by the committees that will be formed.

10. What are the potential costs associated with the implementation of such a program, including changes to current production and handling procedures, assessments, and audits?

A cost analysis should also include added environmental costs and consequences, including the last two decades of lost public investment in environmental stewardship and that the industry cannot afford to lose consumer confidence.

11. How would a marketing program complement, duplicate, or conflict with any other existing programs, such as state food safety regulations?

As we have stated, a marketing program should complement environmental stewardship efforts that many growers in California embrace. Conflict with water quality and wildlife regulations and protections can be avoided. The Western Growers Association's leafy greens marketing agreement and process should be considered as an ideal starting point for developing the national marketing agreement. Such a program should include a cap on independent contractual agreements that might seek market differentiation based on going above and beyond the proposed national program.

12. Are there other issues and/or suggestions about such a marketing program?

Yes. It is important that small distributors and farmers have representation. Best practices are mainly developed for large farms of the fresh-cut processing industry and are neither feasible nor demonstrated to be necessary for small farmers dependent on direct marketing or for most organic growers. We can avoid imposing requirements on small local systems that will cost tens of thousands of dollars for small farmers and eliminate access to fresh local produce for stores, restaurants and food service providers. We can avoid the one-size-fits-all mentality and still have vigorous, productive agriculture.